

Duval County Public Schools
1701 Prudential Drive
Jacksonville, FL 32207

July 2, 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Entity & BEN	Duval County Public School District (BEN 127591)
Contact Person	David J. Neugent – Telecom Supervisor & E-Rate Manager
Contact Information	
Mailing Address	4019 Boulevard Center Dr. 3002A, Jacksonville, FL 32207
Funding Year	2013 – 2014
Application Type & Application	Form 471 # 918481
FRN	2538855
Category of Service:	Internet Access
Service Provider	SchoolWires SPIN 143027372

Appeal Summary

Upon submitting an original application for funding, Duval County Public Schools received a denial, and submitted evidence and narratives to support why this denial should be overturned as requested. Upon the initial denial, evaluation of the appeal documentation and summarization, and after verbally discussing the district's actions, USAC approved the application for E-rate funding. As understood, the process includes multiple evaluations by USAC via PIA and Special Compliance Reviews, and it seems there are now differing positions. On February 13, 2014, the approval for E-rate funding was overturned and the application was denied again.

As with the first denial and appeal response, Duval County Public Schools affirms its position this application and funding should be approved without delay. The process followed by Duval County Public Schools aligns with USAC's goals to help organizations secure access to affordable services, and keeping our stakeholders connected. Duval County Public Schools considers the following reasons as to why this appeal should be approved:

- No RFP, formal or informal, was developed or distributed to the vendors by Duval County Public Schools; forms 470 and 471 for web hosting services were the sole primary source for solicitation; Duval County Public Schools never redefined or created an additional specification and/or scope outlining more service requirements; a subsequent request for information from vendors was issued to better understand

capabilities to create an evaluation matrix, and this was shared with all vendors to ensure the district conducted an open and fair process as required by USAC.

- Only E-rate eligible capabilities, experience, qualifications, and cost were used to recommend a vendor to the Superintendent to award the contract; each of the vendors demonstrated similar qualifications with the exception of price; as required by USAC, price of the eligible products and services were the primary factor, and the vendor with the lowest cost was selected; other capabilities such as offering a mobile application were asked of each firm, however they did not factor in the selection as they are not eligible for E-rate.
- Based on this contract value, the Superintendent is the only authority to select the vendor; standard purchasing policies of Duval County Public Schools place price as a primary factor when selecting a vendor; the selected vendor by the Superintendent was awarded the contract on the same day as the USAC filing of Form 471 (3/14/2013) in order to ensure this contract met the filing deadline, and exceed USAC's 28 day waiting requirement for selection.

Explanation for Denial given by USAC:

The following summarized responses correlate to each funding commitment decision explanation. . Per the Funding Commitment Report, BEN 127591, Funding Year 2013.

- 1) MR1: Contract Award Date was changed from 03/14/2013 to 05/01/2013 to agree with documentation provided.
- 2) DR1: FRN 2538855 is denied since the contract provided was signed after the Certification Postmark Date of the Form 471.
 - a) The provided contract signed May 1, 2013. A binding contract with the service provider must be in place at the time of the submission of the FCC Form 471.
- 3) DR2: FRN 2538855 is denied because price was not the primary factor in your vendor selection.
 - a) Documentation shows you conducted an evaluation March 7, 2013. In the March 7, 2013 evaluation, bidders were evaluated to determine if they met requirements as set forth in a March 1, 2013 email sent to vendors. Price is not one of the requirements in the March 1, 2013 email and thus you have not demonstrated that price was your primary consideration.
 - b) Additionally, you conducted a vendor evaluation prior to the required 28-day waiting period. The vendor evaluation conducted on March 7, 2013 occurred prior to the Allowable Contract Date.

- 4) 4 DR3: FRN 2538855 will be denied for failure to advise bidders on your FCC Form 470 that a Request for Proposal (RFP) was used in the bidding process.
- a. On March 1, 2013 you issued an email to vendors that included criteria that you would consider for your vendor selection process. The criteria are web hosting specifications that were not listed on the FCC Form 470 that established the bidding process. In the email vendors are asked to respond by March 7, 2013 to each of the specs. The email is considered to be an RFP since it contains specs not contained in the Form 470. Since the list of specs in the March 1, 2013 email was not included on the FCC Form 470 and was not available to all vendors, it violates competitive bidding. Additionally, Program rules require that any new information issued to vendors is available for 28 days. The March 1, 2013 email was not available to vendors for 28 days. Additionally, you conducted a vendor evaluation prior to the required 28-day waiting period. The vendor evaluation conducted on March 7, 2013 occurred prior to the Allowable Contract Date.

USAC Appeal

Duval County Public School District filed Appeal with USAC on 4/8/2014 (Attached) which was again Denied June 9, 2014 for the basic same reasons as sighted above.

Appeal Explanation

DR3 Response

Duval County Public Schools has a strict procurement process for issuing and awarding contracts per the RFP process, and this project did follow those policies based on the solicitation via the Schools and Libraries E-rate funding program coordinated by USAC. Per USAC's guidelines for RFP submission and definition, an RFP is not required. The request for information, sent via email 3/1/2013 listed standard criteria typically associated with a web hosting provider. Duval County Public Schools sent this email to not add or change the scope in any manner, rather to ensure industry best practices for confidentiality, integrity and availability were understood for this project. Most importantly, this email was sent to ensure all vendors had the ability to respond to the same email via USAC's Open & Fair Process. This solicitation does not require the district to adhere to the RFP process as the scope remained the same per the FCC Form 470. While this information was reviewed by an evaluation committee, only the Superintendent had the ability to make a selection for this contract. Per USAC's guidelines, the 28-day waiting period only applies to making the selection, but does not stipulate that reviews and/or evaluations cannot occur during this timeframe.

DR2 Response

A preliminary evaluation occurred on 3/7/2013 to review documentation and ensure each vendor has submitted its price proposal. The email sent on 3/1/2013 was a request for information to better understand capabilities and collect additional criteria about each vendor in advance of the 3/7/2013 evaluation. The last statement in the request for information email

dated 3/1/2013, "you do not need to meet every criteria to be considered for selection," demonstrates this is simply a request for information to gain a better understanding of each vendor, and not specific qualifications to be used as the primary selection criteria. The proposal prices for each vendor were listed as the only objective response on the evaluation matrix, while the rest of the criteria simply had a check mark designating if the line item was standard or not provided. No selection or awards were made during the 3/7/2013 meeting by the evaluation committee. Based on the submitted price proposals, the evaluation committee made its recommendation of the lowest cost vendor to the Superintendent upon conclusion of the 3/7/2013 meeting. Thus, price was the primary consideration. In addition, the Superintendent is the only authority to select the vendor, and standard purchasing policies of Duval County Public Schools place price as the primary factor when selecting a vendor. Price is the lynch pin in the selection process and is the first point of consideration as outlined in Duval County Public Schools Purchasing guidelines.

- The Evaluation Matrix (attached) shows the features of each responding vendors and associated costs of each solution.
- ❖ Note the lowest cost Vendor (SchoolWires) was selected for their services.

Federal Communications Commission (FCC) rules require applicants to wait at least 28 days after the FCC Form 470 is posted to the USAC website before selecting a service provider, executing any contracts for contracted services, or signing and submitting an FCC Form 471. The evaluation meeting conducted on 3/7/2013 was a review of price proposals and criteria submitted by each vendor regards to qualifications, capabilities and experience. This was not a selection nor was any contract executed or signed or filing of a FCC Form 471 prior to the allowable contract date. The allowable contract date was 3/13/2013 per USAC's 28-day waiting period after filing the FCC Form 470. A recommendation was made, however no official selection of a vendor occurred during the 3/7/2013 meeting as the Superintendent makes the final decision upon evaluating all information. The Superintendent made an official selection on 3/14/2013. No RFP or new, changed or altered scope of services issued at any time during this application process.

DR1 Response

Duval County Public Schools awarded the contract on 3/14/2013 to the lowest cost vendor, and proceeded to enter a binding agreement that was vetted by legal representatives of both the school district and vendor to ensure school board policies, and state and federal laws were followed as required. Completion of this process occurred on 5/01/2013 with final signature by both parties. An internal e-mail from the Duval County Public Schools legal team on 3/14/13 confirmed that a vendor had been selected and that since 3/14/13 was the last day to file 471 that could occur while final negotiations occurred. These negotiations resulted in School Board Approval 5/1/13.

Appeal Request

- 1) While Duval County Public Schools failed to comply with the Commission's competitive bidding requirements for FRN 2538855 because it did not identify the greatest weight to price in selecting specifications, Duval County Public Schools asks the FCC grant a waiver to its competitive bidding requirements since the Evaluation Matrix supports that Duval County Public Schools did select the lowest-cost provider.

Consistent with DA 13-2055 Fall River SLD-662946

& Allendale County Order 26 FCC

Duval County Schools requests that sections 54.503, 54.5049a) and 54.511 of Commission's rules be waived.

- 2) Duval County Public Schools also requests a waiver of the rule that a contract be in place before filing the 471 Certification.

The Federal Communications Commission has held on numerous occasions that a vendor selection can pre-date the actual signature date of a contract. For Example, since all Contract approvals in the Duval Public Schools are contingent on School Board Approval, a vendor can be selected prior to the close of the filing window with the selection date service as the contract award date:

Requests for Waiver of the Decision of the Universal Service Administrator by Barborton City School District, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-400938, et al., CC Docket No. 02-6, 23 FCC Rcd 15526 (Wireline Comp. Bur. 2008); Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Animas School District 6, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-427902, et al., CC Docket No. 02-6, 26 FCC Rcd 16903 (Wireline Comp. Bur. 2011); Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Administrative Headquarters, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-478729, et al., CC Docket No. 02-6, 27 FCC Rcd 13509 (Wireline Comp. Bur. 2012) (all granting appeals on the basis that petitioners had agreements in place with their service providers before filing their Forms 471, even though the contracts in question were not signed and dated by both parties before the petitioners filed their FCC Form 471).

It appears that the FCC under its Report and Order of July 11, 2014 para 203 is also of the belief that filing the 471 once contract is agreed upon while the signatures are obtained is allowed:

203. In order to further increase the efficiency of the administrative process and simplify the application process for applicants, we revise section 54.504(a) of our rules to require that applicants have a signed contract or other legally binding agreement in place prior to submitting their FCC Forms 471 to USAC.⁴⁶⁷ The rule had required applicants to submit their FCC Forms 471 requesting support for services "upon signing a contract for eligible services."⁴⁶⁸ While this rule ensures that applicants have negotiated and agreed to contractual terms prior to the filing of an FCC Form 471 requesting support for E-rate services, there are many instances where applicants have an agreement in place with their service provider or are already receiving services, but have difficulty obtaining signatures prior to the submission of their FCC Forms 471.⁴⁶⁹